

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
State Independent Alliance and	)	WT-00-239
Independent Telecommunications Group	)	
Petition for Declaratory Ruling	)	
	)	

**COMMENTS OF  
THE ORGANIZATION FOR THE PROMOTION AND  
ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES**

The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) hereby submits these comments in response to the Public Notice<sup>1</sup> regarding the Petition for Declaratory Ruling filed by the State Independent Alliance and Independent Telecommunications Group (Independents).<sup>2</sup> The Independents seek clarification that Western Wireless' Basic Universal Service (BUS) offering in Kansas is not a Commercial Mobile Radio Service (CMRS). OPASTCO is a national trade association representing approximately 500 independently owned and operated small telecommunications service providers serving rural areas of the United States. Its members, which include both commercial

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<sup>1</sup> *Wireless Telecommunications Bureau Seeks Comment on Petition For Declaratory Ruling That Western Wireless' Basic Universal Service In Kansas Is Subject to Regulation As Local Exchange Service*, Public Notice, WT-00-239, DA 00-2622, (rel. Nov. 21, 2000).

<sup>2</sup> *Petition of the State Independent Alliance and the Independent Telecommunications Group for a Declaratory Ruling That the Basic Universal Service Offering Provided by Western Wireless in Kansas is Subject to Regulation as Local Exchange Service* (filed Nov. 3, 2000) (Independents' Petition).

companies and cooperatives, are “rural telephone companies” as defined by the Telecommunications Act of 1996 (1996 Act).<sup>3</sup> Together, OPASTCO members serve over 2.5 million customers. Nearly one-half of OPASTCO’s members provide wireless services, and nearly one-third provide competitive local exchange service to surrounding or nearby communities.

OPASTCO supports the Independents’ Petition and requests that the Commission grant it without delay. Furthermore, as the market for local service becomes increasingly competitive, the FCC should seek to reduce regulation of all local exchange carriers in an equitable manner, regardless of the technologies they use to provide service.

**I. Western Wireless’ Basic Universal Service (BUS) offering is a fixed local exchange service intended to replicate the service of landline telephone companies**

Through the course of their petition and supporting documents, the Independents clearly establish that Western Wireless’ BUS offering in Kansas is a fixed, not mobile, service. The descriptions provided by the Commission, the equipment manufacturer, and Western Wireless itself all testify to the fact that BUS stations do not ordinarily move.<sup>4</sup> BUS is simply a local exchange carrier service, one that happens to use a wireless local loop instead of terrestrial wiring.<sup>5</sup> The statutory definition for a mobile service, as the Independents note, goes beyond the mere *ability* to move, and requires that the radio-communications station “ordinarily does

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<sup>3</sup> 47 U.S.C. § 153(37).

<sup>4</sup> Independents’ Petition at 8 - 14.

<sup>5</sup> *Ibid.* at 6 - 14.

move.”<sup>6</sup> The statute therefore directs that the ordinary use of the mobile station must be for mobile purposes; it is not sufficient that the station is *capable* of being moved, or even that it *occasionally* moves.

## **II. Regulatory parity is necessary to ensure that consumers can enjoy the long-term benefits of sustained competition**

Section 332(c)(3) of the Communications Act declares that states have no “authority to regulate the entry of or the rates charged by any commercial *mobile service*.”<sup>7</sup> Western Wireless attempts to use the communication station’s technical ability to move as a justification to claim regulatory status as a mobile service, even though it is not designed or intended to be “mobile” as defined by statute. OPASTCO has long maintained that the precise technology and transmission medium used by the local loop, whether wireless or wireline, is incidental for regulatory purposes.<sup>8</sup>

Disparate regulatory treatment among providers of similar services will inevitably result in advantages for one group of companies over others. However, consumers will not receive the full benefits of a truly competitive marketplace if regulations favor one set of providers. As the Commission has recognized, targeted short-term advantages for select providers will ultimately do nothing to help consumers enjoy the benefits of sustained, long-term competition.<sup>9</sup>

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<sup>6</sup> *Id.* at 5 (citing 47 U.S.C. 153(27) and (28); 11 FCC Rcd at 8985 - 8987).

<sup>7</sup> 47 U.S.C. 332(c)(3)(A), emphasis added.

<sup>8</sup> See OPASTCO comments, In the Matter of *Amendment of the Commission’s Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services*, WT Docket No. 96-6 (filed March 1, 1996) (OPASTCO comments).

<sup>9</sup> Independents’ Petition at 17 quoted 9 FCC Rcd at 1420: “Success in the marketplace thus should be driven by technological innovation, service quality, competition-based pricing decisions, and responsiveness to

Like the Independents, OPASTCO does not ask the Commission to “address matters of Kansas law.”<sup>10</sup> Nor does it desire to see any service provider, regardless of the technology it uses, impaired by unnecessary or unequal regulation. As OPASTCO previously stated in its 1996 comments:

OPASTCO does not seek to inhibit wireless companies’ provision of fixed local loop service. Nor does it wish to burden wireless companies’ mobile service operations with any additional regulation. To the contrary, OPASTCO members desire the full range of options and reasonable regulation for their own wireless interests.<sup>11</sup>

OPASTCO believes that all providers should be regulated as lightly as possible, but evenly, particularly in a competitive market where flexibility and regulatory parity are necessary components of success.<sup>12</sup>

### **III. Clarification that Western Wireless’ BUS offering is a fixed local loop service is necessary to uphold the Commission’s principles of technological and competitive neutrality**

The Commission’s Order adopting rules implementing Section 254 of the Communications Act added “competitive neutrality” as an additional principle upon which to base policies for the preservation and advancement of universal service.<sup>13</sup> The notion that states are preempted by Section 332(c)(3) from choosing whether to impose the same entry and rate

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consumer needs - not by strategies in the regulatory arena.”

<sup>10</sup> Independents’ Petition at 14, fn. 36.

<sup>11</sup> OPASTCO comments at 2.

<sup>12</sup> Sec. 11(a)(2) of the Communications Act acknowledges that competition can render regulations obsolete (47 U.S.C. 11(a)(2)). In addition, the Commission has recognized that it must “manage the transition from an industry regulator to a market facilitator” and “[d]eregulate as competition develops” (*Strategic Plan: A New FCC For The 21<sup>st</sup> Century* at 1 (rel. Aug. 12, 1999)).

<sup>13</sup> Federal-State Joint Board on Universal Service, *Report and Order*, CC Doc. 96-45, 12 FCC Rcd. 8776, 8800-

regulations on carriers which directly compete with each other, simply on the basis of differing technologies, is mistaken, and has direct implications for universal service. It is therefore important that the Commission invoke the principle of competitive neutrality in support of the conclusion that a Declaratory Ruling should be issued. The incorrect conclusion that state jurisdiction over wireless local loop service is preempted by Sec. 332(c)(3), if offered by a carrier which is also a CMRS provider, would result in universal service support mechanisms that unfairly advantage one provider over another, and unfairly favor one technology over another.<sup>14</sup> This would be contrary to the Commission's sound policy of technological and competitive neutrality.

#### **IV. Conclusion**

For the reasons discussed above, OPASTCO supports the Independents' Petition for Declaratory Ruling and recommends that the Commission promptly grant it. OPASTCO seeks regulatory parity among all fixed local exchange providers, regardless of the technology used to deliver service to customers. As competition continues to develop, OPASTCO urges the Commission to continue to reduce its regulations on all carriers so that they may compete unfettered on an equitable basis. This will allow consumer choices, not government rules, to determine success in the marketplace.

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8803 (1997).

<sup>14</sup> *See, id.* at 8801.  
OPASTCO Comments  
December 21, 2000

Respectfully submitted,

**THE ORGANIZATION FOR THE PROMOTION AND  
ADVANCEMENT OF SMALL  
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December 21, 2000

## **CERTIFICATE OF SERVICE**

I, Tiffany N. Belk, hereby certify that on this, the 21st day of December, 2000, a copy of OPASTCO's comments was sent by first class United States mail, postage prepaid, or hand delivered, to those listed on the attached sheet.

/s/ Tiffany N. Belk\_\_\_\_\_

Tiffany N. Belk

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